

CHAPTER 6 CONSTRUCTION PROCUREMENT

PART 6.2 ALTERNATIVE METHODS OF CONTRACT ADMINISTRATION COMPETITIVE SEALED PROPOSALS (CM/Constructor, Design-Build, Guaranteed Energy Savings Contracts)

6.2.1 ALTERNATIVE METHODS DEFINED

Alternative Methods of Contract Administration are methods that procure construction by means other than competitive low bid (design-bid-build). Unless and until such time as Senate Bill 282 (submitted in the 2007 – 2008 Legislative Session) becomes law, any such method shall procure construction through the Competitive Sealed Proposal process of SC Code § 11-35-1530, SC Regulations 19 445.1095 and 19 445.1097, and Part 6.2 of this Chapter. When and if Senate Bill 282 becomes law, any such method shall procure construction through the Competitive Sealed Proposal process set forth in that bill, ensuing regulations, and this Chapter. In addition to these requirements, OSE has published a Request for Proposal (RFP) Handbook for Agencies to use for guidance in the Competitive Sealed Proposal process. This handbook is available on OSE's Web site.

6.2.2 METHODS OF CONSTRUCTION CONTRACTING ADMINISTRATION USING REQUEST FOR PROPOSALS

The following are examples of construction contracting administration methods that use the Competitive Sealed Proposal process to procure construction:

1. Construction management at-risk (CM/at-risk) also known as CM/Constructor (CM/C);
2. Design-build;
3. Operations and Maintenance;
4. Design-build-finance;
5. Design-build-operate-maintain
6. Design-build-finance-operate-maintain
7. Guaranteed Energy, Water, or Wastewater Savings Contracts; and
8. Any other method of procuring construction other than low bid.

6.2.3 AGENCY DETERMINATION & REQUEST FOR APPROVAL

An Agency desiring to use alternative methods of contract administration must determine in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State. The determination must meet the requirements of SC Reg. 19-445.2145(A) and Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003). The Agency will find the Sloan decision posted on MMO's Web site at <http://www.mmo.sc.gov/MMO/legal/DDP/decisions/>. Under Sloan, the determination must fulfill two purposes:

1. It must effectively inform the State Engineer and, by extension, the Budget & Control Board, why the selected method of contract administration works to the Agency's best advantage for the project at issue, and
2. It must provide the citizens of South Carolina a window into the Agency's "decision-making process – safeguarding the quality and integrity of the contract awards through public accountability."

"If the written determination provides sufficient factual grounds and reasoning for the ... public to make an informed, objective review of these decisions, then it has accomplished its purpose." Sloan.

The Agency must submit the written determination to the State Engineer along with a request to use the alternative method. The State Engineer has ten days to review and determine his position with respect to the proposed method. If the State Engineer disagrees with the agency, the State Engineer shall provide written notification to the Board and the agency stating the reasons for contesting the selected method. The Board shall make the final decision as to the approved method of construction contracting.

6.2.4 CONSTRUCTION MANAGEMENT AT-RISK

A. DEFINITIONS

1. “Construction management at-risk” is a project delivery method in which the Agency awards separate contracts, one for architectural and engineering services to design the project and the second to a construction manager at-risk for both construction of the project facility according to the design and construction management services.

2. “Construction management services” are the provision of the management activities required to plan, schedule, coordinate, and manage the design and construction plan of a project in a manner that contributes to the control of time, cost and quality of construction. CM services typically include oversight of the following:

- a. Project Schedules,
- b. Project Cost Control,
- c. Constructability of the Project,
- d. Project Management,
- e. Building Technology (e.g., building materials, equipment and systems),
- f. Bidding and Negotiation of Construction Contracts, and
- g. Construction.

B. SPECIAL CONSIDERATIONS FOR CM AT-RISK

Firms seeking CM/C work must be registered both as a construction manager and as a general contractor with the SC Contractor’s Licensing Board. The CM/C’s General Contractor’s license must have a license group designation that will allow the CM-C to provide 100% Performance and 100% Labor and Material Payment Bonds for the entire project.

The fees awarded to both the A/E and the CM/C (for the professional services portion of the CM-C’s services) must represent fair and equitable compensation for the actual services required of each. The form and amount of compensation to the CM/C for the construction portion of the CM/C’s services must reflect the degree to which the Agency and the CM/C share the risks and rewards of project cost overruns and under-runs.

NOTE: Construction phase services are subject to the limitations on retainage in SC Code § 11-35-3030(4).

C. NOTES CONCERNING CONSTRUCTION MANAGER – ADVISOR

Unlike a CM at-risk, a Construction Manager Advisor (CM/A) only contracts to provide construction management services and does not assume any of the responsibility or risk for construction of the project. The Procurement Code defines CM/A (using the term “Construction Management”) as a professional service. Therefore an Agency wanting to procure the services of a CM/A must use the procedures outlined in Chapter 4 of this Manual.

6.2.5 DESIGN-BUILD

A. DEFINITIONS

1. “Design-build” is a project delivery method in which the Agency enters into a single contract for design and construction of an infrastructure facility. Design-build includes permutations such as the following:

- a. Design-build-finance: A project delivery method in which the Agency enters into a single contract for design, construction, and financing of an infrastructure facility.
- b. Design-build-operate-maintain: A project delivery method in which the Agency enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period.

c. Design-build-finance-operate-maintain: A project delivery method in which the Agency enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period.

2. “Design requirements” are the written requirements of the infrastructure facility the Agency intends to procure using design-build, including:

- a. The features, functions, characteristics, qualities, and properties that the Agency and State require;
- b. The anticipated schedule, including start, duration, and completion; and
- c. The budgets, as applicable to the specific procurement, for design, construction, operation, and maintenance.

The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project. Unless the Agency has the professional staff necessary to prepare the design requirements, it should hire a design professional to do so using the qualification based selection process set forth in Chapter 4 of this Manual.

3. “Independent peer reviewer services” are additional architectural and engineering services that an Agency must acquire, except as otherwise provided in this Manual, in design-build, design-build-operate-maintain, or design-build-finance-operate-maintain procurements. The function of the independent peer reviewer is to confirm that the key elements of the professional engineering and architectural design provided by the contractor are in conformance with the applicable standard of care. If an Agency body elects not to contract with the independent peer reviewer proposed by the successful offeror, the Agency must select the independent peer reviewer through qualifications based selection in accordance with Chapter 4 of this Manual.

B. REQUIRED EVALUATION FACTORS

When an Agency is conducting a design-build procurement, it must use the following evaluation factors in the RFP:

1. Demonstrated compliance with the design requirements;
2. Offeror qualifications;
3. Financial capacity;
4. Project schedule;
5. Price, or, for design-build- operate-maintain or design-build-finance-operate-maintain, life-cycle price;
6. Competence and qualifications of offerors proposed independent peer reviewer;
7. Other factors, if any.

C. PROJECTS EXEMPTED FROM THE REQUIREMENT FOR AN INDEPENDENT PEER REVIEWER

If the Agency desires to forego an independent peer reviewer, the Agency must submit to the State Engineer a written determination that considering the nature, size, and scope of the project, the Agency has personnel on staff qualified to perform the functions of the independent peer reviewer. The Agency must include the qualifications of the personnel who will perform the functions of the independent peer reviewer. The State Engineer will within 10 days of receipt of the Agency’s determination, notify the Agency of his determination, in writing, whether to allow the Agency to forego an independent peer reviewer.

D. LICENSING AND BONDING REQUIREMENTS FOR DESIGN-BUILDERS

The design-builder must comply with all licensing requirements of the SC Department of Labor, Licensing and Regulation. The design-builder must provide a performance bond and a material and labor payment bond, both for 100% of the cost of design and construction.

The Agency may require one or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately or as one element of another project delivery method:

1. Operations period surety bonds that secure the performance of the contractor’s operations and maintenance obligations;

2. Letters of credit in an amount appropriate to cover the cost to the governmental body of preventing infrastructure service interruptions for a period up to twelve months; and
3. Appropriate written guarantees from the contractor, or depending upon the circumstances, from a parent corporation, to secure the recovery of re-procurement costs to the governmental body if the contractor defaults in performance.”

6.2.6 OPERATIONS MAINTENANCE

“Operations and Maintenance” is a project delivery method in which the Agency enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility.

6.2.7 GUARANTEED ENERGY, WATER, OR WASTEWATER SAVINGS CONTRACTS

"Guaranteed energy, water, or wastewater savings contract" are contracts for the evaluation and recommendation of energy, water, or wastewater conservation measures and for implementation of one or more of these measures. Such contracts must provide that all payments (except obligations on termination of the contract before its expiration) must be made over time and the cost savings or billable revenue increases resulting from implementation of the energy, water, or wastewater conservation measures may be used to make payments for the energy, water, or wastewater conservation systems installed pursuant to the contract. The Agency must procure such contracts using the Request for Proposal process.

The State Energy Office publishes two guides for Public entities to use in Performance Contracting, the [*Guide to Performance Contracting*](#) and the [*Performance Contracting Manual*](#). An Agency may view the State Energy Office's Web site at <http://www.energy.sc.gov/index.aspx?m=7&t=48&h=182>.

6.2.8 ORGANIZATIONAL STRUCTURE AND STAFFING FOR CONDUCTING THE RFP PROCESS

A. ORGANIZATIONAL STRUCTURE

The organization consists of a selection committee to evaluate the proposals and a final approval authority (the Agency Head or a designee. The Selection Committee is composed of a non-voting Chair appointed by the State Engineer, the Agency Project Manager, and technical members appointed by the Agency. The number of technical members appointed for a particular procurement depends upon the circumstances of the procurement (e.g., types of expertise needed and number of proposals anticipated).

The Selection Committee assists the Agency Project Manager in developing the Selection Plan, and for evaluating proposals in accordance with the Plan and the RFP. The Selection Committee is also responsible for the preparation of report(s) on the evaluation results. The Selection Committee reports to the individual with the responsibility for final Agency approval of the selection.

B. SPECIFIC RESPONSIBILITIES

1. Agency Head or his/her designee: The Agency Head, acting as the final selection authority, is responsible for the following:
 - a. Directing the Agency's efforts during the entire source selection process.
 - b. Reviewing and approving of the Selection Plan and the Request for Proposals (RFP).
 - c. Appointing the members of the Selection Committee, other than the Chair (OSE must concur with the proposed Committee membership).
 - d. Reviewing and approving the schedule of all actions required from receipt of proposals to signing of the contract.
 - e. Providing the Selection Committee with appropriate guidance and special instructions as may be necessary for conducting the evaluation and selection process including approving the evaluation factors and weights assigned.
 - f. Reviewing and approving the Selection Committee's competitive range determination, if any.
 - g. Reviewing and approving the Selection Committee's final report and selection. The Agency Head may choose to reject the Committee's choice, but such action will require a new procurement.

2. Agency Project Manager: Subject to the policies and procedures of a specific agency, the Project Manager is responsible for the following:

- a. Preparing and submitting a draft of the Selection Plan to the Selection Committee for its review.
- b. Preparing and submitting the final Plan to the Agency Head and the Office of State Engineer for approval.
- c. Preparing the Request for Proposals, with the assistance of program and/or technical personnel.
- d. Coordinating with the Selection Committee, the Agency Head, and the OSE on the preparation and issuance of the RFP.
- e. Issuing any amendments to the RFP in conjunction with the OSE.
- f. Conducting pre-proposal conferences in accordance with established procedures.
- g. Preparing South Carolina Business Opportunities (SCBO) announcements.
- h. Safeguarding classified or other sensitive materials, including proposals and amendments.
- i. Conducting or coordinating cost or price analyses and documenting the results.
- j. Participating as a voting member of the Selection Committee.
- k. Promptly notifying all offerors eliminated from the competition.
- l. Determining contractor responsibility.
- m. Conducting or controlling all discussions and negotiations with offerors.
- n. Requesting best and final offers.
- o. Taking all necessary contractual actions.
- p. Conducting the debriefing of unsuccessful offerors.

3. Selection Committee Chair: The Selection Committee Chair is a non-voting member appointed by the State Engineer. The Committee Chair's duties include the following:

- a. Scheduling and conducting Committee meetings and deliberations.
- b. Providing overall supervision, planning direction, and execution of the Committee's activities.
- c. Completing the Committee's responsibilities within the prescribed period established in the Agency Plan.
- d. Making final determinations of responsiveness on individual proposals.
- e. Approving all competitive range determinations. The Chair may add offerors to the competitive range, but shall not remove them except for reasons of non-responsiveness.
- f. Supporting the Agency Head to the fullest extent possible by conducting intermittent in-process reviews as required.
- g. Summarizing the raw evaluation data.
- h. Assisting the Agency Project Manager in debriefings to the extent requested.

C. COMMITTEE MEMBERSHIP

The Selection Committee must be composed of State employees. For the purposes of selection, members of Agency Boards, acting in their official capacity, are State employees. The Committee should be comprised of a minimum of five voting members. The State Engineer must concur in all RFP selection committee appointments. Committee members must sign nondisclosure and conflict of interest statements.

D. TECHNICAL ADVISORS

The Agency Head may appoint outside technical advisors with special expertise not available on the Selection Committee but considered essential to the selection process. Advisors must sign nondisclosure and conflict of interest statements. The Agency should use Advisors in discrete areas such as reviewing technical aspects of proposals to assure compliance with the technical requirements of the RFP. The Agency should not give Advisors access to information concerning overall Committee activities and should not attend Committee meetings unless specifically requested by the Committee Chair.

E. CHANGES IN SELECTION COMMITTEE MEMBERSHIP

An Agency may only make changes in the makeup of the selection committee with the approval of the Agency Head and the OSE.

6.2.9 SELECTION PLAN

A. DEFINITION

The Selection Plan (Plan) is the document that explains how the Agency will solicit proposals from contractors and evaluate those proposals in order to make the selection decision. It outlines how the Agency will conduct negotiations. It identifies who will do the evaluating (i.e., it identifies the Chair and members of the Committee). The Plan establishes milestone dates for the completion of the selection process. The Plan is, in short, the Agency's statement to itself and to others as to how it intends to acquire what it needs. It distinguishes what is important from what is not and, by assigning weights, defines how important these distinctions are.

B. MINIMUM REQUIREMENTS

The Plan must include the following, as a minimum:

1. A description of the organizational structure;
2. A description of the proposed pre-solicitation activities;
3. A summary of the acquisition strategy, including any project-specific modifications to the State's standard contract forms, terms, and conditions;
4. A statement of the proposed evaluation factors and their relative importance;
5. A description of the evaluation process and selection methodology and techniques the Agency will use; and
6. A schedule of significant milestones.

C. PREPARATION AND APPROVAL OF THE PLAN

The Project Manager prepares the Plan with the assistance of the responsible program and technical officials. The Committee must review the plan and the Agency Head and the OSE must approve the final plan before the Agency issues the solicitation or holds any pre-solicitation conference.

D. PRINCIPAL ELEMENTS OF THE SELECTION PLAN

The following are the principal elements the Agency must consider in the development of each Plan:

1. Description of property or services to be acquired.
2. Description of Committee structure and the duties and responsibilities of each element of the organization. Include the nominations for Committee by attaching a roster of personnel by name, title, and agency to the plan.
3. Schedules and agenda for the Committee and key events or milestones that will occur between the time the Selection Committee is organized and its adjournment
4. Proposed pre-solicitation activities such as the issuance of a draft solicitation or convening a pre-solicitation conference or pre-proposal conference.
5. Summary of the acquisition strategy including an explanation of the type of contract to be used, the proposed contract form, and the nature of any special features to be included in the contract.
6. Statement of the proposed evaluation factors and their relative importance.
7. Description of the evaluation process, methodology, and techniques including an explanation of the approach to selection.
8. Description, for "in-house" use, of the methodology that evaluators will use to express their judgment of the degree of merit each proposal possesses in relation to the announced evaluation factors including the scoring system the committee will use in the evaluation.
9. Schedule of significant milestones.

6.2.10 THE REQUEST FOR PROPOSAL (RFP)

A. THE SOLICITATION

The Agency must prepare a solicitation that will clearly communicate to the offerors both the Agency's needs and the evaluation factors the Selection Committee will use in the evaluating the proposals. The solicitation should not include the Plan. The solicitation must:

1. Advise prospective offerors on how their proposals should be organized and arranged.

2. Provide that offerors must submit the technical and price or cost portions of their proposals in separate sealed envelopes.
3. Inform offerors of the evaluation factors for award and information on the source selection system the Agency will employ including a statement of all significant factors and sub-factors (including price) which the agency reasonably expects to consider in evaluating proposals and the relative importance assigned to each of these factors.
4. Inform offerors of minimum requirements that apply to particular evaluation factors and significant sub-factors.

B. THE SOLICITATION: ADDITIONAL REQUIREMENTS FOR DESIGN-BUILD

An Agency solicitation, in addition to the requirements of Part 6.2.10A above:

1. Must include the Agency's design requirements;
2. Must solicit proposal development documents;
3. If the Agency determines the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement, may:
 - a. Provide for pre-qualification of offerors;
 - b. Provide for short-listing of responsive and responsible offerors determined to be reasonably susceptible of being selected for award before discussions and evaluations pursuant to SC Code § 11-35-1530 provided:
 - i. The RFP states the number of proposals the Agency will short-list, and
 - ii. The Agency gives prompt public notice of which proposals it short-lists.
 - c. Provide for the payment of stipends to unsuccessful offerors if:
 - i. The RFP includes the amount of the stipend, and
 - ii. The RFP includes the terms under which the Agency will pay stipends.
4. In addition to any other evaluation factors, must include the relative importance of the following required evaluation factors:
 - a. Demonstrated compliance with the design requirements;
 - b. Offeror qualifications;
 - c. Financial capacity;
 - d. Project schedule;
 - e. price, or, for design-build- operate-maintain or design-build-finance-operate-maintain, life-cycle price; and
 - f. Competence and qualifications of offerors proposed independent peer reviewer if the offeror is required to provide a peer reviewer as a part of its proposal.
5. Must require each offeror to identify an independent peer reviewer; unless the Agency plans to directly hire an independent peer reviewer using the procedures for procuring professional services.

C. PRE-PROPOSAL CONFERENCES

The Agency may conduct a pre-proposal conference to explain or clarify the solicitation and complicated specifications and requirements (e.g., proposal format) to interested firms. The Agency should use any such conference to eliminate misunderstandings that may arise from misinterpretation, complexity, errors, omissions, or other deficiencies.

When the Agency determines that a pre-proposal conference is in its best interest, the Agency must notify all firms receiving solicitations and advertise the conference in SCBO. The Agency must give adequate notice to prospective offerors so that all who wish to may arrange for representation. The notice must define as explicitly as possible the nature and scope of the conference.

At the pre-proposal conference, the Agency must furnish all prospective offerors identical information in connection with the proposed acquisition. The Agency may not use remarks and explanations at the conference to modify or qualify the terms of the solicitation and specifications. If the Agency wishes to modify or qualify the terms of the solicitation and specifications, it must do so by written amendment. The Agency must make a complete record of the conference and make the record a part of its procurement file.

6.2.11 NON-DISCLOSURE OF PROCUREMENT AND CONFIDENTIAL INFORMATION

Prior to a contract award or posting of Notice of Award, personnel participating in the procurement process may not reveal source selection information to any unauthorized person. Anyone receiving a request for information before contract award or posting of Notice of Award must forward the request to the project manager. (See SC Reg. 19 445.2010 and 19 445.2095C(1)). Personnel participating in the procurement process may not reveal proprietary information submitted by offerors to any unauthorized person at any time. All personnel who participate in the procurement process must sign an agreement not to discuss or reveal information concerning the process except to an individual participating in the same proceeding, and then only to the extent that the information is required in connection with the proceedings.

A. “SOURCE SELECTION INFORMATION” is information defined as such in SC Reg. 19-445.2010. Source selection information includes information stored in electronic, magnetic, audio, or video formats, prepared or developed for use by the State to conduct a particular procurement. Source selection information is information that would jeopardize the integrity or successful completion of a particular procurement if someone were to disclose it to a competing contractor. Source selection information is required by statute, regulation or order to be secured in a procurement file or other facility to prevent disclosure. Source selection information is limited to the following:

1. Proposed costs or prices submitted in response to an Agency solicitation, or lists of those proposed costs or prices;
2. Source selection plans;
3. Technical evaluation plans;
4. Technical evaluations of proposals;
5. Cost or price evaluation of proposals;
6. Information regarding which proposals are determined to be reasonably susceptible of being selected for award;
7. Rankings of responses, proposals, or competitors;
8. Reports and evaluations of the selection committee; and
9. Other information based on a case-by-case determination of the Agency Head or OSE that its disclosure would jeopardize the integrity or successful completion of the procurement.

See SC Reg. 19 445.2010.

B. “PROPRIETARY INFORMATION” is any information submitted to the State by a contractor and designated as proprietary, in accordance with law or regulations, by the contractor. (See SC Reg. 19 445.2095C(2).)

6.2.12 CONFLICTS OF INTEREST

Using Form SE-214 (Selection Committee Confidentiality and Conflict of Interest Policy), the Chair of the Selection Committee must instruct the committee members of the Procurement Code’s requirements for ethical conduct, and require each member to sign a statement that he has read and understands those standards of conduct and that he does not have an actual or apparent conflict of interest relating to the proposed acquisition. If an evaluator has an actual or apparent conflict of interest related to a proposal under evaluation, the Chair must remove that evaluator and, if a sufficient number of evaluators do not remain, replace him with another.

6.2.13 RECEIPT OF PROPOSALS

The Agency must time-stamp proposals and modifications upon receipt and hold them unopened (except as otherwise provided in the Procurement Regulations) in a secure place until the established due date.

6.2.14 REGISTER OF PROPOSALS AND PROPOSAL OPENING

The Agency must receive, safeguard, open, and register proposals in accordance with the requirements of SC Reg. 19-445.2095(B) and (C). The Agency’s project manager (or designee) must open the proposals publicly in the presence of one or more State witnesses at the time and place designated in the request for proposals. The person opening the proposals should declare the arrival of the time for receipt of proposals, give his/her name and the

names of the witnesses, and record this information on a Register of Proposals. The Agency must prepare a Register of Proposals that identifies the project and includes the name of each offeror and the number of modifications received, if any. The person opening the proposals and the witness must certify the Register of Proposals in writing as true and accurate. The Agency may not make the Register of Proposals open to public inspection until after the issuance of an award or notification of intent to award, whichever is earlier. The Agency must not disclose the contents and the identity of competing offers during the process of opening proposals. If members of the public appear at the opening, the person opening the proposals should state that he/she will conduct the opening of proposals and recording of the names in silence to protect confidential information.

6.2.15 PERMISSIBLE COMMUNICATIONS WITH OFFERORS AFTER PROPOSAL OPENING BUT BEFORE AWARD

The Chief Procurement Officers have jointly published guidelines for communications with offerors after opening proposals but prior to award. Such discussions include § 11-35-1530(6) clarification discussions and § 11-35-1530(8) negotiations. This document also addresses § 11-35-1530(8)(c) Best and Final Offers. The Agency will find this document posted on OSE's Web site. The Agency must conduct discussion and any BAFO process in accordance with these guidelines. The Agency will find a copy of the guidelines in Appendix D.

6.2.16 REJECTION OF INDIVIDUAL PROPOSALS

SC Reg. 19-445.2095(J) provides the basis for rejection of individual proposals. Under this provision, the Agency does not need to accept proposals unconditionally without alteration or correction, and to the extent otherwise allowed by law (see 6.2.15 above), the State's stated requirements may be clarified after proposals are submitted. The Agency must consider this flexibility in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to the following:

1. The business that submitted the proposal is non-responsible as determined under Section 11-35-1810;
2. The proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect; or
3. The proposed price is clearly unreasonable.

The Agency must document the reasons for cancellation or rejection and make the documentation a part of the procurement file available for public inspection.

6.2.17 RANKING OF PROPOSALS

A. RANKING BY INDIVIDUAL COMMITTEE MEMBERS

Each member of the selection committee must examine each proposal in detail to measure its contents against the established standards for evaluation factors, and assign a score, numerical or otherwise, to each factor. Because numerical scores or other types of grading may not convey fully the individual evaluator's judgment of some aspects of the proposal, each evaluator must supplement each rating with a concise narrative evaluation that includes a discussion and interpretation of the limitations of the rating. The narrative should summarize the strong and weak points of each proposal recording what the contractor offered and how the offer met the established requirements, and it summarizes the strong and weak points of what the contractor has proposed. In instances where the contractor has failed to meet a critical requirement, the evaluator assesses what should be done to remedy the deficiency and what the impact of the deficiency (corrected or uncorrected) is on the overall proposal.

B. CONSENSUS OF SELECTION COMMITTEE

The Selection Committee assigns the final score or ranking for each technical proposal by consensus. After the individual members have separately evaluated the proposals, including preparation of their narrative explanations, the Selection Committee must meet and formulate its collective conclusions. The committee must discuss significant variations in evaluators' scores or assessments of technical merit and resolve discrepancies or fully explain them in the record. The Selection Committee must attach a narrative justification to the final score or ranking it assigns to each proposal to demonstrate that the Committee based its final selection on an intelligent and rational judgment of

the technical merits of each competing proposal.

C. SELECTION COMMITTEE REPORT AND RECOMMENDATION

After the Selection Committee evaluates the proposals, the Agency project manager must prepare a report to the Agency Head. The Chair and each Committee member must sign the report. The report must rank each offeror's proposal from the most advantageous to the least advantageous. For each offeror, the report should provide the final score and a summary analysis of each proposal including an assessment of the offeror's compliance with the requirements of the solicitation, any changes to the technical evaluation scores and a narrative to support the changes. The report must include the Committee's recommendation regarding the source(s) the Agency should select for award or negotiation. The Committee must support a recommendation to award to or negotiate with a higher priced, higher scored offeror with a written finding that the technical superiority of the higher priced offer relative to other offers, warrants the additional cost. The Committee must document the rationale for the finding of technical superiority in detail. Unsupported conclusory statements are not acceptable. The report must include a cover page to the report identifying the procurement and including the names and signatures of the Committee members.

6.2.18 AWARD IF PRICE AN INITIAL EVALUATION FACTOR

If price is an initial evaluation factor in the RFP, the Agency must, (subject to Part 6.2.21 below) award to offeror whose offer the Selection Committee determines to be most advantageous to the Agency, taking into consideration price and the evaluation factors set forth in the RFP. See SC Code § 11-35-1530(9). However, the Agency may in lieu of the forgoing, determine to utilize one of the options provided in SC Code § 11-35-1530(8). (Parts 6.2.19 and 6.2.20)

6.2.19 NEGOTIATIONS AFTER EVALUATION AND RANKING

See 6.2.15 above and Appendix D.

6.2.20 BEST AND FINAL OFFERS (BAFO)

See 6.2.15 above and Appendix D.

6.2.21 AWARD

The Agency Head or its governing body typically makes the final selection decision. The Agency Head or its governing body may not overturn the Selection Committee's decision unless they determine that there is no rational basis for the Committee's decision, the Committee did not follow the RFP evaluation factors, or the Committee exercised its discretion in an arbitrary or capricious manner. If the Agency Head or its governing body decides to reject the Committee's selection decision, the Agency must cancel the procurement action and start a new procurement process.

After the Agency Head approves the award, the Project Manager may submit the proposed contract, with supporting documentation, to OSE for review and approval.

6.2.22 SELECTION RECORDS

The Agency should retain all documents and records the Agency generates or receives related to the procurement at the organization level of generation until the Agency makes the selection decision. Then, the Agency should collect all records relating to the source selection effort and forward them to the Agency procurement office for inclusion in the official contract file. At a minimum, the Agency must retain the following records in its procurement file:

1. Request to procure by the RFP method, with OSE authorization;
2. Agency Selection Plan;
3. Plan approval documents with any directed changes;
4. All orders or other documentation establishing membership on the Selection Committee and delegation of duties (e.g. Agency Head);

5. Records of attendance and a summary of proceedings of pre-solicitation and pre-proposal conferences;
6. RFP with amendments;
7. All proposals;
8. The Selection Committee's classification report;
9. The reason for rejecting any offer as not acceptable;
10. Records of discussions with and responses from offerors during the discussion process outlined in Part 6.2.15;
11. Modifications to proposals resulting from discussions;
12. Best and final offers;
13. The Selection Committee report with rankings and recommendations;
14. Agency Heads memorandums and instructions to the Selection Committee and project manager;
15. Agency Head or governing body's decision regarding recommendations for source selection; and
16. Any other data or documents related to the selection process.

6.2.23 NOTIFICATION OF UNSUCCESSFUL OFFERORS

The Agency must provide prompt notification of its selection decision to all unsuccessful offerors. When the Selection Committee determines that an offeror's proposal is not acceptable, the Agency must notify the offeror of the basis of the determination in general terms and advise the offeror that it will not consider a revision to the proposal. Following completion of negotiations, the Agency shall post a Notice of Intent to Award as required in §11-35-1520(10) of the Code.

When the Agency awards a contract for construction on a basis other than price alone, the Agency must furnish the basis for the selection decision and contract award to unsuccessful offerors upon their written request.